

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DONALD PAPAY,	:
	:
Plaintiff,	: 07 Civ. 3858 (SCR)
	:
-against-	: Original Filed By ECF
	:
VIRGINIA HASSELHUHN, as ASSISTANT	: REPLY AFFIRMATION OF
EXECUTIVE DIRECTOR, AMERICAN REGISTRY	: ELLEN FRIED
OF RADIOLOGIC TECHNOLOGISTS, RICHARD F.	:
DAINES as COMMISSIONER, STATE OF NEW YORK	:
DEPARTMENT OF HEALTH, ADELA SALAME-ALFIE :	:
as DIRECTOR, STATE OF NEW YORK DEPARTMENT	:
OF HEALTH - - BUREAU OF ENVIRONMENTAL	:
RADIATION PROTECTIONS (in his official capacity)	:
	:
Defendants.	:
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Ellen J. Fried, declares pursuant to 28 U.S.C. §1746:

1. I am employed as an Assistant Attorney General in the office of Andrew M. Cuomo, Attorney General of the State of New York, and attorney for defendants Richard F. Daines ("Daines") as Commissioner of the State of New York's Department of Health and Adela Salame-Alfie ("Salame-Alfie") as Director of the State of New York's Department of Health, Bureau of Environmental Radiation Protection ("DOH" and collectively "State Defendants"), in this action. I submit this Affirmation on behalf of defendants' motion to dismiss plaintiff's complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. I am fully familiar with the facts set forth herein.

2. The documents annexed hereto as Exhibits were provided to me, as counsel for State Defendants, by Plaintiff's counsel as part of Plaintiff's Rule 26(a) Initial Disclosures as "B. Documents Plaintiff May Use to Support its Defenses" bates numbered 0001 through 0035. A

true copy of “Donald Papay Rule 26(a)m Initial Disclosures” dated July 9, 2007, is annexed hereto as Exhibit “1”.

3. Annexed hereto as Exhibit “2” is a true copy of the letter from Mark Raymond, PhD, (“Dr. Raymond”) Director of Psychometric Service for The American Registry of Radiologic Technologist (“ARRT”) to Larry Gant, Esq, Re: Donald N. Papay, dated May 26, 2005. Plaintiff Donald Papay (“Plaintiff” or “Papay”) cited to, relied upon and quoted from this letter in his Amended Complaint at ¶28.

4. Annexed hereto as Exhibit “3” is a true copy of page 22 from the ARRT 2005 Radiography Certification Handbook with the heading “Appeals of Exam Scoring” at the top of the page. Upon information and belief, this page was enclosed with Dr. Raymond’s letter to Plaintiff dated May 26, 2005.

5. Annexed hereto as Exhibit “4” is a true copy of a page from the 1998 ARRT handbook. Upon information and belief, this page was enclosed with Dr. Raymond’s letter to Plaintiff dated May 26, 2005.

6. Annexed hereto as Exhibit “5” is a true copy of the letter from Dr. Raymond to Shmuel Klein, counsel for plaintiff, dated November 11, 2005. Plaintiff cited to and relied upon this letter in his Amended Complaint at ¶30.

7. Plaintiff has continued to reply upon Dr. Raymond’s letters annexed hereto in his Affirmation in Opposition to Defendants’ Motion to Dismiss at ¶¶10 and 11 and in his Memorandum of Law in Opposition to Defendants’ Motion to Dismiss.

8. Annexed hereto as Exhibit “6” is a true copy of a page from the website of the

The American Registry of Radiologic Technologists entitled “Pilot Items”, from the section on the website “Examinations.” Plaintiff refers to and seeks to rely upon information regarding the ARRT examination questions on the ARRT website in his Amended Complaint at ¶¶32 through 36, his Affirmation in Opposition to Defendants’ Motion to Dismiss at ¶11, and in his Memorandum of Law in Opposition to Defendants’ Motion to Dismiss.

8. I declare under the penalties of perjury under the laws of the United States that the foregoing statements are true and correct.

WHEREFORE, for the foregoing reasons, defendants’ motion to dismiss the complaint should be granted in all respects.

Dated: New York, New York
December 21, 2007

/S/
Ellen J. Fried